

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ALISA ANN BAXTER,

Defendant.

CASE NO. 8:09CR194

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto as well as the Defendant’s request for a deviation (Filing No. 34). Although the Court is aware through the Addendum to the PSR that the government objected at the early stage in the preparation of the PSR to ¶ 29, the government has not filed objections. See “Order on Sentencing Schedule,” ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to various sections of the PSR. The objections are discussed below.

¶ 29 - *Enhancement for Injury*

In reaching their plea agreement, the parties contemplated a 5-level enhancement for “serious bodily injury” under U.S.S.G. § 2A2.2(b)(3)(B). The PSR assesses a 7-level enhancement for “sustained permanent or life threatening bodily injury” under U.S.S.G. § 2A2.2(b)(3)(C). The Defendant objects to the 7-level enhancement. The Court’s tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the 5-level enhancement should be applied. The objection is granted.

¶ 96 - Potential Departures

The Defendant objects to the probation officer's reference to a potential upward departure and lack of reference to a potential downward departure. The Court declines to alter probation officer's comments. The objection is denied.

Motion for Deviation

The Defendant requests a deviation. This matter will be addressed at sentencing.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Filing No. 34 are granted as to ¶ 29 and denied as to ¶ 96;
2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's request for a deviation (Filing No. 34) will be addressed at sentencing.

DATED this 9th day of November, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge